IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 527 OF 2022

(Dreamz Infrastructure, Rallies Plot, Jaistambh Chowk, Amravati Vs. Assessing Officer, Assistant/ Deputy Commissioner of Income Tax, New Delhi & Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Shri Saket Bhattad, Advocate for the petitioner.
Shri Anand Parchure with Shri A.J. Bhoot, Advocate for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : SEPTEMBER 21, 2022.

Heard.

The challenge raised in this Writ Petition is to the order dated 26/4/2021 that has been passed by the Assessing Officer under Section 144 read with Section 144B of the Income-tax Act, 1961 (for short "the said Act"). By that order, the Assessing Officer has assessed the income tax of the petitioner – Firm which according to it is exorbitant and not in consonance with law. Against that order, the petitioner has preferred an Appeal before the Commissioner of Income Tax (Appeals) which is pending. In the meanwhile, the petitioner had sought stay of the demand in dispute by moving an application on 15/5/2021. The Deputy Commissioner of Income Tax rejected the stay application on the ground that the conditions laid down in Clause 4(A) of the Office Memorandum dated 29/2/2016 had not been complied with inasmuch as 15% of the disputed demand had not been deposited. A further application was made before the Principal Commissioner of Income Tax reiterating that request. The same has been turned down on 5/10/2021. Consequent thereto, penalty proceedings have been initiated under Section 270A of the said Act. In this backdrop, the assessment order dated 26/4/2021 has been sought to be challenged.

The learned Counsel for the petitioner submits that though an Appeal has been preferred by challenging the aforesaid order, as a result of rejection of the stay application the bank accounts of the petitioner have been freezed. Inviting attention to Clause 4(B)(b) of the Office Memorandum dated 29/2/2016, it is submitted that the authorities ought to have considered the request for stay of the demand as made in the light of the power conferred by the said Clause. There has been no consideration of the aforesaid aspect and hence the further steps taken consequent to the passing of the assessment order are illegal. In support, the learned Counsel seeks to place reliance on the decisions in i) *Bhupendra Murji Shah Vs. Deputy Commissioner of Income Tax And Ors. [WP Nos. 2157/2018 and 2160/2018* decided on *11/9/2018];* ii) *Arcil Retail Loan Portfolio 001-D-Trust And Anr. Vs. Principal Commissioner of Income Tax And Ors. [WP (L) No. 810/2019* decided on *22/3/2019]* with other connected matters; and iii) *Harsh Dipak Shah Vs. Union Of India [(2022) 113 CCH 0183 GujHC].*

On the other hand, the learned Counsel for the respondents supported the impugned order. According to him, since an Appeal has been preferred by the petitioner, all contentions on merits can be raised before the Appellate Authority. Since the conditions prescribed by Clause 4(A) of the Office Memorandum dated 29/2/2016 were not fulfilled, the stay was rightly refused.

Having heard the learned Counsel for the parties, it is seen that what is under challenge in the Writ Petition is the assessment order dated 26/4/2021. It is not in dispute that this order has been subjected to an Appeal and that Appeal is pending. In the interregnum, the petitioner's request for staying the impugned demand has been rejected. It is seen that the initial order of rejection is dated 6/8/2021 and thereafter on 5/10/2021. It is true that the petitioner seeks to rely upon Clause 4(B)(b) of the Office Memorandum dated 29/2/2016. It however cannot be lost sight of that consequent to the orders refusing stay, the bank accounts of the petitioner have been freezed. The orders dated 6/8/2021 and 5/10/2021 refusing stay are not under challenge. In the light of the fact that the assessment order is dated 26/4/2021 and there was no interim relief granted in the present proceedings, the interests of justice would be served by directing the Appellate Authority which is the Commissioner of Income Tax (Appeals) to expeditiously decide the pending Appeal. All questions on merits can be effectively raised for consideration before the Appellate Authority.

Accordingly, it is directed that the Commissioner of Income Tax (Appeals) shall within a period of eight weeks from today decide the Appeal on its own merits without going into the question of non-compliance of Clause 4(A) of the Office Memorandum dated 29/2/2016. In the light of the fact that the bank accounts of the petitioner have already been freezed, no further coercive steps be taken to enforce the demand till the Appeal is decided. It is clarified that this Court has not examined the issue on merits and all questions are kept open.

The Writ Petition is disposed of with the aforesaid directions. No costs.

(URMILA JOSHI-PHALKE, J.) **(A. S. CHANDURKAR, J.)**

SUMIT